IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8574 & 8559 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JHAVERBHAI SAVJIBHAI PATEL THROUGH P.O.A. HOLDER

Versus

KANCHANBEN NATHUBHAI PATEL

Appearance:

1. Special Civil Application No. 8574 of 2005

MR NK MAJMUDAR for Petitioner No. 1

MR AR MAJMUDAR for Petitioner No. 1

MR AJ PATEL for Respondent No. 1

MR MENGDEY, Ld. AGP for State

..... for Respondent No. 2-6

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 10/05/2005

COMMON ORAL JUDGEMENT

Leave to delete Respondent No.7 from Special Civil Application No.8559/2005.

2. With the consent of the parties, both the matters are taken up for final hearing today and as in both the petitions there are more or less common issues and common challenge, they are being considered together by this common order.

3. RULE. Mr.A.J.Patel, learned Counsel appears for the private respondents and waives service of notice of Rule. Mr.Mengdey, learned AGP appears for State authorities and waives service of notice of Rule for respondent authorities.

4. Upon hearing the learned Counsel appearing for the parties, it appears that the common question arise for consideration of the Court is as to whether the entry mutated on the basis of the registered sale deed could have been ordered to be cancelled by the authority in toto or the authority ought to have allowed the revenue entry to be continued with the qualification and clarification that the same would be subject to the outcome of the proceedings of civil suit which is pending before the concerned competent court.

5. As such it appears that there is no dispute on the point of the factual aspects regarding the existance of the registered sale deeds. However, the authority of the person who has executed the registered sale deed is disputed and the validity of the registered sale deed is not challenged in the civil suit No.497/2002. There is also no dispute on the point that the entry was initially entered in the revenue record and upon the objection, the Mamlatdar upheld the objections and the entry was not taken on record. There is also no dispute on the point that the Dy. Collector in appeal restored the entry, whereas the Collector as well as the State Government in revision cancelled the entry and directed for remand for considering the legality and validity of the transaction, succession by will and other aspects and under these circumstances, the present petition.

6. As such the issue involved in this petition is covered by the decision of this Court in case of "Jayantilal Jethalal Soni v. State of Gujarat" dated 28.9.2004 passed in Special Civil Application No.12547/2004. The relevant observations made by this Court in the aforesaid decision at paragraphs 7, 8, and 9 are as under:

"7. It appears that if a registered sale deed is executed by the holder of the land, it confers

the right pertaining to the land in question in favour of the purchaser of the land and, therefore, the rights pertaining to the land in question in normal circumstances can be said to have been acquired over the land in question for which recording is required to be made in the revenue record. It is also well settled that the revenue entries are having value only for fiscal purpose and more particularly for the purpose of recovery of revenue and it neither confers any right or title over the property, nor does it take away the right or title in the property which otherwise cannot be available under the law. However, the question which arises for the consideration is if a sale deed is executed by the holder of the land which runs prima facie counter to the other statutory provisions of other enactment or is barred under the other enactment or it alters or disturbs the rights of the persons under the other enactment then, can the revenue authority shut its eyes by ignoring such flagrant violation of such law or if it is considered, what will be the proper course to be followed ? In case of "Evergreen Apartment Co-op. Housing Society" (supra), this Court has expressed the view that it is not open to the revenue authority exercising power under the Code to exercise power under the other enactment and to decide in respect to the breaches which are committed under the other enactment and thereby to uncertify the entry or to cancel the entry made in the revenue record. In case of "Janardan D. Patel v. State of Gujarat" (supra) at para 11, it has been observed as under:

"11. If any such question arises, the matter should be referred to the authority empowered to deal with under the said other enactment. For example, the validity of a transaction on the basis of Sec. 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for brief) is sought to be challenged. That question cannot be decided by revenue authorities in RTS proceedings. In such situation, the correct procedure to be followed would be to refer the matter to the authority empowered under the Tenancy Act for his decision. The necessary mutation entry may be made only after the decision of

that authority under the Tenancy Act is received. It would, however, not be open to revenue authorities in RTS proceedings to decide that question."

8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgement, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This Court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession

of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not.

9. In view of the above, it cannot said that the orders passed by all the authorities on the basis that the Mamlatdar has not inquired into the aforesaid three aspects namely as to whether there is any breach of the provisions of the Prevention of Fragmentation Act or the provisions of Tenancy Act, are absolutely without any basis and the orders can be maintained only to the extent that in case it is found by the Mamlatdar after remand that there are prima facie breach of the other enactment by the transfer in question, the revenue authority exercising power under the Code may refer the matter to the appropriate authority under the other enactment or may relegate the affected party to resort to appropriate proceedings under the other enactment and the entry may be considered subject to the final outcome in the proceedings under the other enactment, as observed hereinabove in earlier paragraphs."

7. The very decision came to be considered by this Court even in the matter, where the validity of the registered sale deed was under challenge by preferring civil suit. This Court by relying upon the earlier decision in case of "Jayantilal Jethalal Soni v. State

of Gujarat" (supra), in Special Civil Application No.14037/2004 dated 24.12.2004 in case of "Hasmukhbhai Kasturchand Shah v. Heirs of Dahiben Wd/o Shanabhai Bhulabhai & Hirabhai" has further made observations at paragraphs 4 and 5 as under:

"4. Therefore, so far as the entries which are based on registered sale deed are concerned, the same cannot be cancelled in toto and it deserves to be restored in the revenue record with the clarification that they shall be subject to the outcome of the proceedings under Section 84C of the Tenancy Act which as per the contention of Mr.Barot are pending before the Revenue Tribunal. So far as entry No.1900 dated 26.2.1972 is concerned, the same was not directly the subject matte of the proceedings under Section 84C of the Tenancy Act which were initiated in respect to three registered sale deeds on the basis of which entries No.2067, 2068 and 2248 were mutated in the revenue record. It appears that after entry No.1900 dated 26.2.1972 the very land is sold by registered sale deed by deceased Dahiben through power-of-attorney holder Hirabhai Shanabhai and the sale deed is not signed by Hirabhai Krishnakantbhai, but only a reference is made to the entry No.1900 dated 26.2.1972 in the succession of title of the property. The land is sold subsequently by the owner who is shown in the revenue record. But even if it is the case of the contesting respondents through Mr.Barot that entry No.1900 dated 26.2.1972 is in breach of provisions of Section 84C of the Tenancy Act, then it would be for the appropriate authority under the said act to initiate the proceedings. In any event, the fact remains that the entry has continued for a long period and thereafter the land is already sold by registered sale deed. Therefore, the exercise of the power for cancellation of the entry which in view of the subsequent sale of the land in question by the registered sale deed dated 21.2.1976, cannot be said as proper and justified on the part of the authority. If the contesting respondents who are represented by Mr.Barot are asserting any right in the property, it would be for them to prefer appropriate proceedings by preferring Civil Suit or they may resort to appropriate proceedings for identifying their rights, if any, in the property. It is well settled even otherwise also, the exercise of

suo motu power cannot be undertaken after an unreasonable period and further revenue entries are having values for fiscal purposes and they never confer any title, nor do they alter any right in the property, which otherwise exists as per the provisions of Transfer of Properties Act or the relevant law for the time being in force.

5. Under the above circumstances, the impugned orders passed by the revenue authorities cancelling the entry No.1900 and subsequent entry No.2248 dated 16.8.1976 and entry No.2067 dated 20th September, 1975 and No.2068 dated 20th September, 1975 are restored to the revenue record with the clarification and the qualification that the same shall be subject to the outcome of the Regular Civil Suit No.4180 of 2004 and No.9275 of 2003 pending in the concerned Civil Court and also subject to the outcome of the proceedings of revision pending before the Tribunal in connection with the proceedings under Section 84C of the Tenancy Act. It is further made clear that it would be open to the aggrieved parties to pursue their rights, if any, pertaining to the property/ies in respect of which entry/ies is/are ordered to be restored by resorting to appropriate proceedings in the Civil Court, either in the pending Suit or by substantive suit as may be permissible in law."

8. In my view, the same situation would prevail in view of the aforesaid decision of this Court and as a consequence thereof, the orders passed by the Revenue Authorities for cancelling the entry No.8569 in toto deserves to be quashed and set aside with the direction that the entry No.8569 shall continue to remain in revenue record with the qualification and clarification that the same shall be subject to the outcome of the proceedings of Civil Suit No.497/2002.

9. So far as Special Civil Application No.8559 of 2005 is concerned, the same will be the situation, except that there will be change in the number of entry being Entry No.8570 and, therefore, the entry No.8570 shall continue to remain in revenue record with the qualification and clarification that the same shall be subject to the outcome of the proceedings of Civil Suit No.497/2002.

10. Both the petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly.

Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

10-5-2005 (Jayant Patel, J.)

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